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7 AMERICAN GENERAL FINANCIAL SERVICES, INC.

8 UNITED STATES BANKRUPTCY COURT FOR  
9 THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 In re:

13 DAVID HOWARD PALMER,  
14 Debtor.

Bk. No. 09-56279 - RLE

Chapter 13

15 OBJECTIONS TO CONFIRMATION OF  
16 DEBTOR'S CHAPTER 13 PLAN

Confirmation Hearing-

17 Date: October 7, 2009

Time: 9:50 a.m.

Place: Bankruptcy Court

280 S 1st St 3rd floor # 3099

San Jose, CA 95113

19  
20 AMERICAN GENERAL FINANCIAL SERVICES, INC., its assignees and/or  
21 successors in interest, secured creditor of the above named Debtor, hereby objects to the  
22 confirmation of Debtor's proposed Chapter 13 Plan on the following grounds:

23 1. AMERICAN GENERAL FINANCIAL SERVICES, INC. ("Lender") is the  
24 obligee under a note and security agreement, which is secured by a **2004 TERRY M-320DBHS,**  
25 **VIN 1EA1D322742482648, License No. 1KZ5956** ("Collateral"), pursuant to its proof of claim  
26 on file with this court.  
27  
28

2. The following is a recap of the amounts claimed by Lender and the treatment of Lender's claim under the Plan.

DEBTOR'S PLAN	LENDER'S CLAIM	GENERAL TERMS OF PLAN	
AMOUNT LISTED BY DEBTOR FOR LENDER'S CLAIM	TOTAL CLAIM AMOUNT OWED TO LENDER	LENGTH OF PLAN	FINAL PAYMENT DUE DATE ON LENDER'S LOAN
\$9,000.00	\$17,313.35	44 months	January 1, 2012
PROPOSED MONTHLY PAYMENTS TO LENDER	LENDER'S VALUE OF COLLATERAL	MISCELLANEOUS	
\$90.00	\$12,300.00		
VALUE OF COLLATERAL LISTED IN PLAN			
\$9,000.00			

3. The secured amount owed to Lender on its secured loan is \$17,313.35 pursuant to its proof of claim on file with this court. However, the Debtor has specified in the Plan that Lender's claim is \$9,000.00. Where the allowed claim is secured by personal property, as Lender's claim is in this case, the valuation of the Collateral should be determined based on its replacement value, without deducting sales or marketing costs. See 11 U.S.C. § 506(a)(2). Section 506(a)(2) states that "replacement value" means the "price a retail merchant would charge for property of the same age and condition at the time value is determined." 11 U.S.C. § 506(a)(2). The N.A.D.A. report dated August 11, 2009 sets the retail value of the Collateral at \$12,300.00. A copy of the N.A.D.A. report is attached hereto as Exhibit "A" and is incorporated herein by reference. Lender requests that the court take judicial notice of this report pursuant to F.R.E. 201.

1           4.       Debtor has proposed to repay this claim at 5% interest over the life of the Plan.  
2       The contract rate of interest on this loan is 19.67%. Debtor's Plan should provide a higher rate  
3       of interest to be paid to Lender. In Till v. SCS Credit Corporation, the Supreme Court set forth a  
4       two-part "prime-plus" formula for the determination of interest paid to creditors under the  
5       cramdown provisions in chapter 13 plans. 541 U.S. 465, 478-479 (2004). The interest rate owed  
6       to creditors under this formula is the national prime rate adjusted upwards to account for risk. Id.  
7       The Supreme Court listed risk factors to be evaluated for the upward adjustment of interest as (1)  
8       "the circumstances of the estate," (2) "the nature of the security," and (3) "the duration and  
9       feasibility of the reorganization plan." Id. The Plan should provide for the contract rate of  
10      interest or, alternatively, it should provide for a rate of interest higher than that currently  
11      proposed in order to account for risk of nonpayment pursuant to the factors listed in Till, id.,  
12      specifically because the Collateral is a rapidly depreciating asset and because of the length of the  
13      plan. Because of the Debtor filing bankruptcy, the length of the Plan and the fact that the  
14      Collateral is a rapidly depreciating asset, Lender is entitled to an increased interest rate. Because  
15      a higher interest rate will increase payments due under the Plan, the Plan is in violation of 11  
16      U.S.C. § 1325(a)(6).

17           5.       Debtor is attempting to repay arrearages owed to Lender over a time period  
18      exceeding 36 months without showing "cause"; thus, the Plan should not be confirmed. See 11  
19      U.S.C. § 1322(d)(2)(C).

20           6.       Due to the depreciation of the Collateral, it is likely that the Collateral will have  
21      no value by the Plan's completion. Accordingly, the Plan may violate 11 U.S.C. § 1325(a)(4)  
22      because Lender would likely receive more money if the Collateral is liquidated now than if the  
23      Collateral depreciates over the term of the Plan and Debtor discontinues making payments.

24           7.       Further, given that Debtor has understated Lender's claim, the payments made  
25      under the Plan will be insufficient to repay the listed claims, thereby extending the plan duration  
26      beyond 60 months, which constitutes a violation of 11 U.S.C. §§ 1322(d) and 1325 (a)(6).

27           8.       Debtor has proposed a minimum monthly payment of \$90.00 per month to the  
28      Chapter 13 Trustee for pre-petition arrearages. It is likely that the Plan will run a negative

1 amortization on the payment of Lender's claim (i.e., the minimum payment will not cover  
2 accruing interest) because there are administrative fees to be paid to Debtor's counsel and other  
3 priority payments to be made to the Chapter 13 Trustee. This is contrary to the Ninth Circuit's  
4 holding in Great Western v. Sierra Woods Group, 953 F.2d 1174, 1177-1178 (9th Cir. 1992),  
5 because the negative amortization of Lender's claim likely to result from the Debtor's Plan is  
6 unfair such that the Plan should not be confirmed as submitted.

7 9. Further, a minimum monthly payment of \$90.00 puts the Plan in violation of 11  
8 U.S.C. § 1325(a)(5)(B)(iii), which provides that the amount of payments on a secured claim shall  
9 not be less than an amount that provides the secured creditor adequate protection.

10 10. Debtor's Plan proposes payment to Lender of \$90.00. Pursuant to the loan terms,  
11 the regular monthly payment due to Lender from Debtor is \$829.28. In the last month, the  
12 Collateral has depreciated \$246.66 as evidenced by N.A.D.A valuations for August 11, 2009,  
13 attached hereto as Exhibit "A," and November 13, 2008, attached hereto as Exhibit "B".  
14 Accordingly, the amount proposed by Debtor under the Plan will not cover interest to be paid on  
15 Lender's claim. Given the priority payments to be made to Debtor's counsel under the Plan, as  
16 well as payments to other creditors, the treatment of Lender's claim will likely jeopardize  
17 Lender's security interest because, as the Collateral's value progressively declines, the claim  
18 amount increases and the proposed minimum plan payments do not cover the minimum interest  
19 amounts needed to avoid an increase in the amount owing on the claim. The Plan thereby results  
20 in negative amortization of Lender's claim in violation of 11 U.S.C. § 1325(a)(5)(B)(iii). See  
21 also Great Western v. Sierra Woods Group, 953 F.2d 1174 (9th Cir. 1992).

22 11. Lender objects to any provision in Debtor's Plan that could be construed to  
23 require it to convey the Certificate of Title to Debtor prior to completion of the Debtor's  
24 obligations to fully repay Lender's claim under the Plan. Such provision violates 11 U.S.C. §  
25 1325(a)(5)(B)(i)(I). Consequently, if Debtor proposes that his property shall revert upon  
26 confirmation, Lender objects to such a provision if it requires conveyance of the Certificate of  
27 Title prior to full payment of its secured and unsecured claims. Any such provision would  
28 directly contradict 11 U.S.C. § 1325(a)(5)(B)(i)(I).

1                   WHEREFORE, Lender prays that Debtor's Plan not be confirmed and that these  
2 proceedings be dismissed, unless these objections are remedied.

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4                   SCHEER LAW GROUP, LLP

5 DATED: September 11, 2009

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